REMARKS

Presently, claims 62-71 are pending in the application.

Claim Rejections – § 102(e)

The Examiner has rejected claims 62-64, 68-69 and 71 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Application Publication 2001/0025377 to Hinderks ("Hinderks"). The Examiner contends that Hinderks discloses all elements of the claimed invention. Applicant respectfully traverses this rejection.

Hinderks discloses a method of delivering digital data to multiple viewers having Internet access. In Hinderks, a multicasting protocol is used so that, for much of the transmission path, only a single data stream is transported. Hinderks teaches the transmission of a stream of Internet Protocol (IP) content over a dedicated transmission line to a remote Internet point-of-presence (POP). The dedicated transmission line is separate from the Internet backbone, thus facilitating the use of IP multicasting. Hinderks also teaches that a local server at a POP waits for a trigger in the received content stream, and when the trigger arrives, the local server substitutes a commercial in place of the content until the arrival of a second trigger, at which point the content is reinstated. In this way, in Hinderks, the insertion of commercials is delayed until the last possible point in the transmission path.

For a rejection under § 102(e) to be proper, a reference must disclose, either explicitly or inherently, <u>each and every element</u> of the claimed invention. Applicant respectfully submits that Hinderks does not disclose each and every element recited in independent claim 62.

Independent claim 62 recites:

> A method of delivering presentation streams carrying targeted
> advertisements to subscribers in a switched television service
> network environment, the method comprising:
>
> (a) defining a plurality of market segments;

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(b) generating a set of presentation streams corresponding to a programming channel having programming data, <u>each of the presentation streams in the set corresponding to a different one of the plurality of market segments, each of the presentation streams in the set carrying the same programming data as the programming channel and at least one advertisement directed to the market segment to which the presentation stream corresponds,</u> wherein the presentation streams are generated independent of a request for the programming channel by the subscribers;

(c) simultaneously delivering the set of presentation streams to a switching device;

(d) receiving at the switching device a first request for the programming channel from a first subscriber in a first market segment;

(e) switching a first presentation stream corresponding to the first market segment from the set of presentation streams to the first subscriber;

(f) receiving at the switching device a second request for the programming channel from a second subscriber in a second market segment; and

(g) switching a second presentation stream corresponding to the second market segment from the set of presentation streams to the second subscriber.

Applicant respectfully submits that Hinderks does not disclose "generating a set of presentation streams corresponding to a programming channel having programming data, <u>each of the presentation streams in the set carrying</u> the same programming data as the programming channel and <u>at least one advertisement directed to the market segment to which the presentation stream corresponds,</u>" as recited in independent claim 62. In fact, there is no disclosure in Hinderks of a multicast transmission containing multiple data streams having the same content or data streams that correspond to a particular programming channel. Moreover, even through Hinderks indicates that the multicast system could include the transmission of multiple streams, Hinderks does not thereby disclose that such streams each carry "at least one advertisement directed to the market segment to which the presentation stream corresponds."

Applicant also respectfully submits that Hinderks does not disclose "simultaneously delivering the set of presentation streams to a switching device", since as noted above, Hinderks does not disclose such a "set of presentation streams...each of the presentation streams in the set carrying...at least one advertisement directed to the market segment to which the presentation stream corresponds." The Examiner contends that features 1020, 1008 and 1024 in Fig. 35 of Hinderks correspond to "simultaneously delivering the set of presentation streams to a switching device." Applicant respectfully disagrees, pointing out that there is no disclosure in Hinderks that the output 1008 of local server 1020 that is delivered to router 1024 contains data streams having identical content, nor does Hinderks disclose that the each of the multicast data streams of output 1008 have advertisements "directed to the market segment to which the presentation stream corresponds."

Applicant respectfully submits that Hinderks also does not disclose "defining a plurality of market segments." In fact, Hinderks does not disclose the concept of accounting for market segments generally. The Examiner contends that the local commercials in Hinderks correspond to market segments. Applicant respectfully disagrees, since the mere fact that Hinderks has identified geographic areas as receiving particular content, does not mean that Hinderks discloses that those geographic areas are based on any market segmentation.

Furthermore, Applicant respectfully submits that Hinderks neither discloses "receiving at the switching device a first request for the programming channel from a first subscriber in a first market segment", nor "switching a first presentation stream corresponding to the first market segment from the set of presentation streams to the first subscriber", as recited in independent claim 62, since as noted above, Hinderks does not disclose "market segment."

Therefore, Applicant respectfully submits that Hinderks does not disclose all of the features of independent claim 62. Accordingly, independent claim 62 is believed to be allowable over Hinderks.

Dependent claims 63-64, 68-69 and 71 are allowable at least by their dependency on independent claim 62. Reconsideration and withdrawal of the Examiner's §102(e) rejection of claims 62-64, 68-69 and 71 are respectfully requested.

Claim Rejections – § 103(a)

The Examiner has rejected claims 65-67 and 70 under 35 U.S.C. §103(a) as being unpatentable over Hinderks. The Examiner contends that Hinderks teaches all features of the claimed invention with the exception of the features noted below. The Examiner further contends that the features noted below are well-known in the art. Applicant respectfully traverses this rejection.

With respect to claims 65 and 66, the Examiner has taken Official Notice (see page 5 of the Office Action) that "it is notoriously well-known in the art to use subscriber information and segment information identifying advertiser specific market segments in generating an advertisement schedule so as to schedule the most appropriate advertisement for a particular viewer segment," and concludes that "it would have been clearly obvious to one of ordinary skill in the art to implement Hinderks with the use of subscriber information and segment information identifying advertiser specific market segments in generating the advertisement schedule for the stated advantage." However, Applicant disagrees that there are "facts beyond the record" which are "capable of such instant and unquestionable demonstration as to defy dispute" as being 'well-known' in the art, as required by M.P.E.P. §2144.03, which would support an Examiner's finding of Official Notice.

Applicant respectfully traverses the Examiner's taking of Official Notice, and respectfully request that the Examiner support the taking of Official Notice by producing a relevant reference that shows/teaches the use of "subscriber information and segment information identifying advertiser specific market segments in generating an advertisement schedule so as to schedule the most appropriate advertisement for a particular viewer segment", and that the Examiner identify a specific teaching in the reference to support a combination with Hinderks.

With respect to claim 67, the Examiner has taken Official Notice (see page 6 of the Office Action) that "it is notoriously well-known in the art to detecting [sic] a cue tone present in one of the presentation streams so as to recognize the proper time to insert an advertisement," and concludes that "it would have been clearly obvious to one of ordinary skill in the art to implement Hinderks with detecting a cue tone present in one of the presentation streams so as to recognize the proper time to insert an advertisement." However, Applicant disagrees that there are "facts beyond the record" which are "capable of such instant and unquestionable demonstration as to defy dispute" as being 'well-known' in the art, as required by M.P.E.P. §2144.03, which would support an Examiner's finding of Official Notice.

Applicant respectfully traverses the Examiner's taking of Official Notice, and respectfully request that the Examiner support the taking of Official Notice by producing a relevant reference that shows/teaches the use of "detecting a cue tone present in one of the presentation streams so as to recognize the proper time to insert an advertisement", and that the Examiner identify a specific teaching in the reference to support a combination with Hinderks.

With respect to claim 70, the Examiner has taken Official Notice (see page 6 of the Office Action) that "it is notoriously well-known in the art to have market segments defined by different advertisers so as to directly allow the advertisers to choose the viewer base for their marketing scheme," and concludes that "it would have been clearly obvious to one of ordinary skill in the art to implement Hinderks with market segments defined by different advertisers for the stated advantage." However, Applicant disagrees that there are "facts beyond the record" which are "capable of such instant and unquestionable demonstration as to defy dispute" as being 'well-known' in the art, as required by M.P.E.P. §2144.03, which would support an Examiner's finding of Official Notice.

Applicant respectfully traverses the Examiner's taking of Official Notice, and respectfully request that the Examiner support the taking of Official Notice by producing a relevant reference that shows/teaches the use of "market segments defined by different advertisers so as to directly allow the advertisers to choose the viewer base for their

marketing scheme", and that the Examiner identify a specific teaching in the reference to support a combination with Hinderks.

For the same reasons discussed above, Hinderks does not teach or suggest all of the features of independent claim 62. Accordingly, independent claim 62 is allowable over Hinderks. Dependent claims 65-67 and 70 are allowable at least by their dependency on independent claim 62. Reconsideration and withdrawal of the Examiner's §103(a) rejection of claims 65-67 and 70 are respectfully requested.

Conclusion

In view of the foregoing remarks, Applicant respectfully submits that the Examiner's rejections have been overcome, and that the application, including claims 62-71, is in condition for allowance. Reconsideration and withdrawal of the Examiner's rejections and an early Notice of Allowance are respectfully requested.

Respectfully submitted,

Date: _5/8/06_   By: _____

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